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IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1972

No.

DIANE PEACOCK,
Petitioner,

vs.

STATE OF ALABAMA
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF ALABAMA

TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATION JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your Petitioner, Diane Peacock, prays that a Writ of Certiorari be issued out and under the seal of this Court to review the judgment and opinion of the Court of Criminal Appeals of Alabama entered in this case on the 13th day of June, 1972, which affirmed the judgment rendered in the Circuit Court of Jefferson County, Alabama, on May 23, 1972, denying Petitioner's discharge in a habeas corpus proceeding.

An application for rehearing to the Court of Criminal Appeals of Alabama was denied by that Court on June 30, 1972. A petition for a Writ of Certiorari to the Court of Criminal Appeals of Alabama was denied, without opinion, by the Supreme Court of the State of Alabama on August 3, 1972.

Opinions Below

The opinions of the Court of Criminal Appeals of Alabama was reported at 48 Ala. App. , 265 So.2d 175 (June 13, 1972). No opinion was written by the Court of Criminal Appeals in denying the application for rehearing filed therein. No opinion was written by the Supreme Court of the State of Alabama in denying the petition for Writ of Certiorari to the Court of Criminal Appeals filed therein and reported at Ala. App. , 265 So.2d 180 (August 3, 1972).

Jurisdiction

The judgment of the Court of Criminal Appeals of Alabama was entered on June 13, 1972. (Appendix A, p.A) A timely petition for rehearing was filed and denied on June 30, 1972. An application for a Writ of Certiorari from the Court of Criminal Appeals of Alabama was filed and denied on August 3, 1972, by the Supreme Court of the State of Alabama. A Motion to Stay Execution of Sentence was granted on August 17, 1972, by the Court of Criminal Appeals of Alabama so that the matters and things contained herein could be reviewed by this learned Court. The Petitioner has exhausted all state procedures and the judgment of the Court of Criminal Appeals of Alabama is final, and the time for further appeal or rehearing has expired.

The Constitutional provision believed to confer on this Court jurisdiction to review the judgment in question is the Fifth Amendment to the United States Constitution and the Fourteenth Amendment of the United States Constitution.

Question Presented for Review

Whether or not the Court of Criminal Appeals in ruling in effect that supporting papers from a demanding state do not have to be attached to the Governor's Warrant in such a manner that the trial court can, by looking at them, properly see that they have remained intact from the time of their authentication, before admitting them into evidence, denied the Petitioner her Constitutional right to a fair trial by violation of the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution or the equal protection clause of the Fourteenth Amendment.

Constitutional Provision Involved

The Fifth Amendment, United States Constitution, in part:

> (N)or shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law;

The Fourteenth Amendment, United States Constitution, in part:

> (N)or shall any State deprive any person of life, liberty, or property, without due process; nor deny to any person within its jurisdiction the equal protection of the laws.

Statement of the Case

Petitioner filed a Writ of Habeas Corpus in the Jefferson County Circuit Court challenging her detention under a Governor's Warrant from Maryland. The Writ was denied and an appeal to the Criminal Court of Appeals resulted in affirmance on June 13, 1972. On June 30, 1972, an Application for Rehearing was denied by that same Court. The Petitioner filed a Petition for Writ of Certiorari to the Alabama Court of Criminal Appeals and was denied without opinion by the Supreme Court of the State of Alabama on August 3, 1972. A Motion to Stay Execution of Sentence was granted on August 17, 1972, by the Court of Criminal Appeals of Alabama, and the Petitioner, having exhausted all State procedures, now filed this Writ so that the matters and things contained herein could be reviewed by this learned Court.

Petitioner was arrested by the Sheriff of Jefferson County upon a rendition warrant issued by the Governor of Alabama ordering her returned to the State of Maryland to answer a multi-count forgery and larceny indictment. Petitioner filed a Writ of Habeas Corpus and a hearing was held. At the hearing it was adduced that the supporting papers from Maryland were merely stapled loosely to the Governor's Warrant from that State so that it could not be discerned that they had been neither added to nor deleted from. Moreover, it was shown from physical inspection that the papers had been separated at least once. Ore Tenus testimony by the State offered explanation of *one* such separation of the papers.

Other testimony tended to establish Petitioner's presence in Maryland, her complicity in a crime there and the fact that the proceedings were not instituted to collect a debt.

Reasons for Granting the Writ

It is respectfully submitted that the Court of Criminal Appeals of Alabama in its opinion of May 23, 1972, in affirming the denial of Petitioner Peacock's discharge in a habeas corpus proceeding, have in effect denied to Petitioner either her right to equal protection of the laws of its jurisdiction or her right to due process.

We contend that this action by the Court of Criminal Appeals of Alabama could well herald the beginning of a gentle but continuing erosion of a defendant's right to complete due process, by permitting the introduction of papers from foreign jurisdictions in a form that fails to insure their integrity.

In its decision of June 13, 1972, the Court of Appeals indeed formulated what your Petitioner believes to be the critical question of concern in the instant matter and, in fact, they did so with admirable precision and accuracy, to-wit:

> "The Warrant from the demanding State to which were attached supporting papers was not sealed or bound together in such a manner that there could not be an addition or detachment from these papers" (and therefore the supporting papers were not, we respectfully contend, actually showed to be authentic by *virtue of the language contained solely in the warrant).*

The lower court then "rejected" the contention set out above by saying that:

> "There is no requirement that the Governor's Warrant from the demanding State to which are attached supporting documents be secured by a ribbon of any kind... (we agree). *So long as the requisite papers are duly authenticated by executive authority they may be stapled together or fastened in some other manner to assure that they remain intact."* (emphasis ours and parenthetical remarks added).

Again, we agree with the rule set out by the Court of Appeals but if the rule is correct as written, and is indeed intended as the law of the jurisdiction, then the result they

reached is an impossibility. If such be the rule, Petitioner has been denied equal protection of the law as is her right given by the Fourteenth Amendment. We beg for Certiorari so that, if the Court of Appeals rule is correct as stated, we can secure a reversal of the Court of Appeals decision as a denial of equal protection. If such is not the rule of law, we beg for Certiorari, because the absence of such a rule permits the introduction of papers from foreign jurisdictions in such a form as to effectively deny the Petitioner the right of a fair trial.

It has been respectfully submitted by Petitioner that the reason why extradition papers must be fastened in a manner to "insure that they remain intact" is because they are later admitted by virtue of that very condition as proper evidence without further predicate. Logically, papers bearing a Governor's signature from a demanding State and which are received in a physical condition which negatives there *ever* having been not intact, should be admissible without further adieu. A ribbon and seal arrangement running through all the papers is one way (perhaps the most commonly used) to achieve such a result. Certain kinds of staples (with the ends sealed together perhaps) could achieve the same result. To summarize, any binding is sufficient as long as it would clearly disclose in and of itself any previous separating of the papers.

In the instant cause, no such precaution was taken. The papers were simply loosely connected by two small staples near the top, which were of the type and kind which could easily be removed and replaced again with no possible means of subsequent judicial detection.

As a matter of fact, the papers were obviously and admittedly separated once and the small staples reinserted through a different area of the papers. This particular separation was adequately explained in testimony and we make no issue of it.

The point is, however, that when the papers were submitted to the trial judge, he could not say from visual inspection that they had not been disassembled on divers occasions by any number of persons, either in Maryland or here.

Explaining one instance of separating the papers did not preclude the very real contingency of many prior separations. For all that could be said the authenticating warrant might have originally been attached to more supporting papers or fewer or entirely different ones and been switched by administrative

persons through error or otherwise. The cases of *Aldio v. State*, 42 Ala. App. 653, 177 So. 2d 107; *Meadows v. State*, 38 Ala. App. 319, 82 So. 2d 811; and *Griffin v. State*, 43 Ala. App. 237, 187 So. 2d 293, and countless others demonstrate the many different and serious deficiencies which can arise in the preparation of such documents which would serve to defeat the provisions of the Alabama statutes requiring precise executive authentication of documents to be used in evidence at extradition proceedings.

In other words, the gravamen of the matter is this. *What if the papers from the demanding State in the instant cause* had been received loose in a large envelope? The fact that the papers had not been added to nor deleted *after being received would be capable of easy proof.* But, of course, the trial judge would just have to assume that the executive of the demanding State had originally intended to authenticate that particular group of supporting papers by acknowledgements on a separate document (the warrant) which accompanied them and that there had been no subsequent additions or deletions. Petitioner has contended that the rule of evidence in this State requires a greater degree of certainty than just "presuming" that there have been no additions or deletions in the demanding State. We agree with the Court of Appeals, that the papers must be fastened to the warrant in some manner to *"insure they remain intact"* until placed in evidence.

The problem here, however, is that the papers and Warrant were so casually "attached" that no greater significance could be placed upon their condition than if they were completely loose.

The State introduced the papers into evidence over timely objection on proper grounds by Petitioner. All cases say that if this admission is error, a reversal and remand for new hearing is required. (Of course, the State's action in offering the supporting papers at all is somewhat surprising.) There is no way to tell what effect they might have had on the result rendered, and so, as is the case with all material, and prejudicially admitted evidence, a reversal is dictated wherever there is error.

If the law as set out by the Code of Alabama and the courts of the State of Alabama do not require extradiction papers to be bound as a prerequisite to their proffer as evidence, despite that portion of the Court of Appeals

opinion requiring that they be bound in such a manner as to insure that they remain intact, we beg that such allows a proceeding where an individual's right under the Fifth and Fourteenth Amendments are diminished, whether by intention or inadvertance. Such a proceeding must be reviewed and the error corrected. Should this learned court hold otherwise than as Petitioner herein urges, it will have tacitly approved a procedure whereby many trial judges will, as in the instant case, begin to accept papers from foreign jurisdictions in such a form that not only fails to insure their integrity, but makes such integrity incapable of proof. Petitioner respectfully submits that, in the light of a reasonable and effective alternative, such a widespread result would in large measure (needlessly) erode the protective mantle of Constitutional guarantees of due process and deny a fair trial to many of your citizens.

If the rule as espoused by the Code of Alabama and the court of the State of Alabama, including the portion of the Court of Appeals opinion stated and emphasized in the preceding paragraphs, is sufficient to prevent the introduction in such a condition as to deny due process to your Petitioner, we beg that your Petitioner has in this case been denied the right to equal protection of the laws of the State of Alabama which are guaranteed and affirmed by the Fourteenth Amendment. If such is the rule, we respectfully submit that under the undisputed evidence in the record (the Court of Appeals did not find to the contrary) the papers in the instant cause were in such condition (the trial judge acknowledged it) that they did not meet the description we have discussed and they could not possibly have been properly admitted into evidence nor could it be said that the Certification by Governor Mandel of the "duly" annexed supporting papers was efficacious within the meaning of Title 15, Sections 50, 53 and 54 of the *Code of Alabama*, Recompiled 1940, and the laws of Alabama, if such are given a construction which complies with the Constitutional guarantee of due process and a fair trial. If such be true, in the instant proceeding the Petitioner's right to equal protection of the laws, as guaranteed by the Fourteenth Amendment, was disregarded, and whether by intention or inadvertance, Petitioner prays that such a proceeding must be reviewed and the error corrected.

Conclusion

For the reason stated, it is submitted the Petition For Writ of Certiorari in this case should be granted.

Respectfully,

PARKER, WILKINSON AND PURVIS
ATTORNEYS PROFESSIONAL ASSOCIATION
210 Frank Nelson Building
Birmingham, Alabama 35203

By:_____
ARTHUR PARKER
Attorney for Petitioner

STATE OF ALABAMA:
JEFFERSON COUNTY:

AFFIDAVIT OF SERVICE

I, Arthur Parker, do depose and say that I have this the _____ day of November, 1972, mailed a copy of the foregoing Petition to the Honorable William J. Baxley, Attorney General for the State of Alabama, to his office located at Administrative Building, Montgomery, Alabama 36101.

PARKER, WILKINSON AND PURVIS
ATTORNEYS PROFESSIONAL ASSOCIATION
210 Frank Nelson Building
Birmingham, Alabama 35203

By:_____
ARTHUR PARKER
Attorney for Petitioner

Executed before me on this the _____ day of November, 1972.

_____
NOTARY PUBLIC

APPENDIX A

THE STATE OF ALABAMA – JUDICIAL DEPARTMENT

THE ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 1971-72

6 Div. 377

Diane Peacock

v.

State

Appeal from Jefferson County Circuit Court

HARRIS, JUDGE

This is an appeal from a judgment rendered in the Tenth Judicial Circuit denying appellant's discharge in a habeas corpus proceeding. This case was argued and submitted in this Court on May 23, 1972.

Appellant was arrested by the Sheriff of Jefferson County upon a rendition warrant issued by the Governor of Alabama ordering her return to the State of Maryland to answer an indictment charging her with the crime of forgery, uttering, larceny after trust. The Sheriff's Return states that petitioner was being held under authority of a duly executed rendition warrant of this State pursuant to the extradition statute of Alabama, "a copy of which Governor's warrant is attached hereto and made a part hereof."

In a full blown hearing in the Court below, the State introduced into evidence the rendition warrant issued by the Governor of Alabama, together with the application for requisition by the Governor of Maryland. The request for requisition was accompanied by a copy of the indictment by the grand jury of Montgomery County, Maryland, charging this appellant with the offense above mentioned.

In the requisition made by the Governor of the demanding state, it is recited:

> *"Whereas, It appears by indictment hereto annexed and duly authenticated in accordance with the laws of this State, that Diane Legg Peacock stand(s) charged with the crime of Forgery, Uttering, Larceny After Trust committed in Montgomery County in this State,*
>
> *"And Whereas it has been represented to me that the said Diane Legg Peacock has fled from justice, and has taken refuge within the State of Alabama.*
>
> *"Now, Therefore, pursuant to the provisions of the Constitution, and the Laws of the United States, in such case made and provided, I Marvin Mandel, Governor of the State of Maryland, do hereby request that the said Diane Legg Peacock be apprehended and delivered to Dep. Sheriff Raymond M. Kight or Dep. Sheriff Robert E. Ray, agents for the State of Maryland who are hereby authorized to receive and convey her the said Diane Legg Peacock to the State of Maryland, there to be dealt with according to law."*

The indictment is certified under the hand and seal of the circuit clerk of Montgomery County, Maryland, to be a true and correct xerox copy of the indictment filed February 4, 1970, as to Diane Legg Peacock in Criminal No. 10839, State of Maryland v. Diane Legg Peacock. The presiding judge of the circuit court of Montgomery County, Maryland, certified that the attestation of the clerk is in due form and by the proper officer, and the circuit clerk certified that the Honorable Kathryn J. Shook, whose genuine signature is subscribed to the certificate was at the time of signing same presiding judge of the circuit court of Montgomery County, Maryland, duly commissioned and qualified.

The above requisition bears the Great Seal of the State of Maryland and is dated July 14, 1970. The allied papers attached to the requisition include an application from the State's Attorney of Montgomery County, Maryland, to the Governor of that state, which certifies that Diane Legg Peacock stands charged by indictment with the crime of forgery, uttering, larceny after trust, committed in said county and

state on the 21st day of November, 1969, and who, to avoid prosecution, fled from that state, and is believed to be within the jurisdiction of the State of Alabama, Birmingham, Jefferson County. There are further recitals to the effect that there is probable cause to believe she is guilty of the crime therein charged, that the extradition is sought in good faith, with sole intent to prosecute for the said crime, and not to collect any debt or serve any private purpose, and that the ends of justice require that she be brought back to that state for trial. This application was under oath and has the usual certification of a notary public with seal affixed and the usual attestation as to genuiness of the handwriting of the notary by the clerk of the circuit court under the seal of that court and with the further attestations by the circuit judge that the attestation of Howard M. Smith, clerk of the circuit court of Montgomery County, is in due form and by the proper officer. Thereupon, Howard M. Smith, clerk of the circuit court of the county aforesaid, certified that Irving A. Levine, who has certified and signed the above attestation, was at the time of so doing, a judge of the circuit court for the county aforesaid, duly commissioned and qualified, and authorized by law to so sign and certify the same, and that his signature thereto is genuine, all under the seal of the circuit court of Montgomery County, Maryland.

Also, in the papers accompanying the requisition is an affidavit, duly sworn to before a committing magistrate with seal affixed, from Jimmie R. Henry, 344 Hungerford Court, Rockville, Montgomery County, Maryland, and is as follows:

> *"That on November 21, 1969, I was employed as Manager for the Hampshire Investors Corporation, doing business from an office located at 344 Hungerford Court, Rockville, Montgomery County, Maryland. In my capacity as Manager, I had an employee working directly under me, namely, Diane Legg Peacock. On November 21, 1969, while in my office locate at at the aforesaid address, Diane Legg Peacock presented to me a Hampshire Investors Corporation check, check No. 808, made payable to Hampshire Investors Corporation, drawn on the Maryland National Bank, in the amount of $576.12, dated November 21, 1969. I then signed this check as maker as is required by the business for the purposes of Diane Legg Peacock transferring funds from one bank to another. Upon signing the check I then returned said check to Diane Legg*

Peacock personally. The check was subsequently returned stamped "Paid November 21, 1969" by the Maryland National Bank. On the check in the payee line directly behind the payee "Hampshire Investors Corporation" had been inserted the word "payroll". This insertion being an alteration of the original document for which Diane Legg Peacock was indicted by the Montgomery County Grand Jury for the crime of forgery on February 3, 1970.

"This Diane Legg Peacock of whom I speak in this affidavit is the same person as in the attached photograph, which is hereby made a part of this affidavit."

Following this affidavit taken before Paul A. Langeven, Committing Magistrate, appears the following certification:

"STATE OF MARYLAND, MONTGOMERY COUNTY, Sct.

"In the Office of the Clerk of the Circuit Court for Montgomery County

"I, HOWARD M. SMITH, Clerk of the CIRCUIT COURT FOR MONTGOMERY COUNTY, being a Court of Record, hereby certify that *Paul A. Langeven* Esquire, before whom the annexed acknowledgment/affidavit was made, and who has thereto subscribed his name, was, at the time of so doing, a COMMITTING MAGISTRATE of the State of Maryland, in and for Montgomery County, duly appointed, commissioned and sworn, and authorized by law to take acknowledgments, and administer oaths, and to exercise the jurisdiction conferred by law on such Committing Magistrate, and further that I am well acquainted with the handwriting of such Committing Magistrate, and that the signature attached hereto, purporting to be his I believe to be genuine.

"IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the Circuit Court for Montgomery County this 8th day of July A.D., 1970

S E A L (Circuit Court for Montgomery County, Md.)

HOWARD M. SMITH (Signed)
Clerk of the Circuit Court for Montgomery County"

The rendition warrant recites the jurisdictional facts showing a requisition from the Governor of Maryland demanding the surrender of petitioner as a fugitive from justice from that state having taken refuge in Alabama, and that she was "charged by indictment in the County of Montgomery, in the State of Maryland, with the crime of Forgery, Uttering, Larceny After Trust. (A duly certified copy of which indictment accompanies said requisition)." It is clear that the warrant contains the necessary jurisdictional recitals to show prima facie authority for petitioner's detention. Title 15, Sections 50, 52 and 54, Code of Alabama 1940; *Kelly v. State*, 30 Ala. App. 21, 200 So. 115; *Pool v. State*, 16 Ala. App. 410, 78 So. 407.

We are pressed for a reversal for two reasons:

1. The papers accompanying the requisition warrant from the Governor of Maryland to the Governor of Alabama were not properly authenticated within the meaning of our extradition statutes.

2. The warrant from the demanding State to which were attached supporting papers was not sealed or bound together in such manner that there could not be an addition or detachment from these papers.

Appellant relies on the following cases in support of both contentions: *Griffin v. State*, 43 Ala. App. 237, 187 So. 2d 293; *Meadows v. State*, 38 Ala. App. 319. 82 So. 2d 811; and *Aldio v. State*, 42 Ala. App. 653, 177 So. 2d 107.

An analysis of these cases clearly demonstrate they are not supportive of the contentions made. In *Meadows* there was no request for requisition from the Governor of the demanding State, and there was no authentication of the affidavit and warrant by the executive authority. In *Aldio* the charge was by "Bench Warrant" as opposed to the statutory requirement that there be a lawful charge "by indictment or by an information filed by a prosecuting officer and supported by affidavit to the facts, or by affidavit made before a magistrate in that state", etc., and the record was de hors a requisition from the Governor of the demanding State.

In the instant case there is full and complete compliance with the requirements embodied in our statutes. See *Aldio v. State*, 44 Ala. App. 303, 208 So. 2d 212, after retrial.

In *Griffin* this Court held that

> "(1) It is not necessary for our Governor to have the formal authentication required under the full Faith and Credit Clause, so long as the Governor of the demanding state authenticates the validity of the required indictment, or other statutorily approved accusation."

Also in *Griffin*, the deputy district attorney was quoted as follows:

> "* * * I would like to point out that the Governor's warrant from the State of Illinois is attached to the supporting papers by red ribbon which is covered by (the) seal (of) the State of Illinois and is bound together by that ribbon and seal. It is in such a manner that there could not be an addition nor a detachment from those papers which are secured by this ribbon, and that the certification in the first paragraph as earlier mentioned is with respect to the authentication of those supporting papers.* * *"

There is no requirement that the Governor's Warrant from the demanding State to which are attached supporting documents be secured by a ribbon of any kind – be its color red, white or blue. So long as the requisite papers are duly authenticated by executive authority they may be stapled together or fastened in some other manner to assure that they remain intact.

The record discloses that one of the secretaries in the Office of the District Attorney in Birmingham, at the request of a deputy district attorney, on the morning of the habeas corpus hearing, took the requisition warrant and supporting papers to a xerox machine in the courthouse building and removed the staples, made a copy of each, reassembled them in the proper order, and restapled all the papers. The trial judge heard this testimony and inspected the papers and afterwards admitted them into evidence. The clerk of the circuit court has

certified to this Court the warrant of the Governor of Maryland the allied papers and exhibits and this Court has also inspected these papers and exhibits. They are in order and meet the requirements of our statutes and the case law of this State.

While we do not want to be understood as sanctioning the practice of disassembling legal documents, we do not perceive error to reverse in the instant case.

There was considerable evidence going to show that petitioner was present in the State of Maryland at the time of the commission of the offense, that she admitted her defalcation, tried to make restitution, and failing therein, she fled the State and took refuge in Alabama.

This Court has many times said that on habeas corpus, the accused has the right and privilege to adduce evidence to show that the extradition proceedings were instituted to aid in the collection of a debt. *Aldio v. State*, 44 Ala. App. 303, 208 So. 2d 212; *Tingley v. State*, 34 Ala. App. 145, 37 So. 2d 678; *Kilgore v. State*, 261 Ala. 465, 75 So. 2d 126.

Petitioner did not testify, but offered testimony from one Jimmie Reed Henry. Mr. Henry was a stockholder of the corporation for whom petitioner worked. He was also secretary or manager of the company. It will serve no useful purpose to set out this witness's testimony in detail. Suffice it to say that his testimony was most damaging to petitioner for it revealed that she had used over ten thousand dollars of the company's money for her own personal use over a period of six to eight months and signed a confession. Her guilt must have impressed the Court below, for he fixed the appeal bond at $10,000.00, though he had ordered her released on $1,000.00 bond pending the hearing.

The judgment is

AFFIRMED.

All the judges concur.

June 13, 1972

STATE OF ALABAMA – JUDICIAL DEPARTMENT

COURT OF CRIMINAL APPEALS

6th Div. 377

Diane Peacock

vs.

State of Alabama

Appeal from Jefferson Circuit Court

Come the parties by attorneys, and the record and matters therein being argued and submitted and duly examined and understood by the Court, it is considered that in the record and proceedings of the Circuit Court there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed. It is also considered that the appellant, and sureties on the appeal bond, pay the costs of appeal of this Court and of the Circuit Court.

A–9

June 30, 1972

STATE OF ALABAMA – JUDICIAL DEPARTMENT

COURT OF CRIMINAL APPEALS

6th Div. 377

Diane Peacock

vs.

State of Alabama

Appeal from Jefferson Circuit Court

It is ordered that the application for rehearing be and the same is overruled.

STATE OF ALABAMA

COUNTY OF MONTGOMERY

I, Mollie Jordan, Clerk of the Court of Criminal Appeals of Alabama, do hereby certify that the foregoing pages contain a full, true and correct copy of the judgment of affirmance and the order overruling the application for rehearing in the cause of 6th Div. 377, Diane Peacock v. The State of Alabama, as the same appears of record and on file in this office.

Witness my hand with the
Seal of the Court attached,
this the 21st day of November,
1972.

Mollie Jordan (Signed)

Clerk of the Court of Criminal Appeals
of Alabama

Thursday, August 3, 1972

6th Division 993

Ex Parte: Diane Peacock, Petitioner

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS

Re: Diane Peacock vs. State of Alabama

Comes the petitioner, and the Petition for Writ of Certiorari to the Court of Criminal Appeals being submitted and duly examined and understood by the Court, it is considered and ordered that the Petition for Writ of Certiorari to the Court of Criminal Appeals be, and the same is hereby, denied, and the petition be, and the same is hereby, dismissed at the cost of the petitioner, for which cost let execution issue.

Heflin, C. J., Merrill, Harwood,
Maddox and McCall, JJ., Concur.

I, J. O. Sentell, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true, and correct copy of the judgment of the Supreme Court of Alabama, in 6th Division 993, Ex Parte: Diane Peacock, Petitioner – Petition for Writ of Certiorari to the Court of Criminal Appeals (Re: Diane Peacock vs. State of Alabama), as the same appears and remains of record and on file in said Court.

WITNESS my hand and seal of the Court attached at the Judicial Department Building, in the City of Montgomery, this the 21st day of November, 1972.

J. O. Sentell (Signed)

J. O. Sentell, Clerk
Supreme Court of Alabama

COPY

DEC 30 1972

MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

NO. 72-821

DIANE PEACOCK,
PETITIONER

—VS—

STATE OF ALABAMA,
RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF CRIMINAL APPEALS OF ALABAMA

BRIEF FOR RESPONDENT IN OPPOSITION

WILLIAM J. BAXLEY
Attorney General of Alabama

RICHARD F. CALHOUN
Assistant Attorney General
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IN THE

Supreme Court of the United States

NO. 72-821

DIANE PEACOCK,
PETITIONER

—VS—

STATE OF ALABAMA,
RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF CRIMINAL APPEALS OF ALABAMA

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Criminal Appeals of Alabama is reported at 48 Ala. App. ____, 265 So.2d 175 (June 13, 1972). A Petition For Certiorari to the Court of Criminal Appeals was denied without opinion by the Alabama Supreme Court, ____ Ala. ____, 265 So.2d 180 (August 3, 1972).

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED

WHETHER THE COURT OF CRIMINAL APPEALS OF ALABAMA VIOLATED PETITIONER'S CONSTITU-

TIONAL RIGHT TO A FAIR TRIAL BY HOLDING THAT THE GOVERNOR'S WARRANT FROM THE DEMANDING STATE AND THE SUPPORTING DOCUMENTS ATTACHED THERETO WERE ADMISSIBLE AS EVIDENCE EVEN THOUGH SUCH WARRANT AND DOCUMENTS WERE FASTENED TOGETHER BY STAPLES.

STATUTES INVOLVED

Title 15, Sections 50 and 52, Code of Alabama 1940, Recompiled 1958, and Title 18, Section 3182, United States Code Annotated, are found in the Appendix at pages 9 and 10.

STATEMENT OF THE CASE

Petitioner was arrested by the Sheriff of Jefferson County, Alabama upon a rendition warrant issued by the Governor of Alabama ordering her return to the State of Maryland to answer an indictment charging her with the crime of forgery, uttering, larceny after trust. The basis of the issuance of the rendition warrant by the Alabama Governor was the receipt by him of a Governor's Warrant from the State of Maryland, to which warrant were stapled several supporting documents, including the indictment aforementioned.

Petitioner filed a Writ of Habeas Corpus in the Jefferson County Circuit Court challenging her detention. The Writ was denied and Petitioner appealed to the Court of Criminal Appeals where the decision of the Circuit Court was affirmed on June 13, 1972. On June 30, 1972, an Application For Rehearing was denied by that same Court and Petitioner filed a Petition For Writ of Certiorari to the Alabama Court of Criminal Appeals. That petition was denied without opinion by the Alabama Supreme Court on

August 3, 1972. On August 17, 1972, the Court of Criminal Appeals granted a Motion to Stay Execution of Sentence.

On the hearing in the Circuit Court of Jefferson County, the evidence tended to show that Petitioner was present in the State of Maryland at the time of the commission of the crime, and that the proceedings had not been instituted to collect a debt. The evidence also showed that Petitioner had admitted the crime, attempted to make restitution, and, failing to do so, had fled to the State of Alabama. It was also shown that on the morning of the hearing, one of the secretaries in the Office of the District Attorney in Birmingham took the requisition warrant and supporting papers sent to Alabama by the Governor of Maryland, removed the staples therefrom, made a copy of each sheet, reassembled them in their proper order, and restapled them. The trial judge heard this testimony, inspected the papers, and admitted them into evidence. The Governor's Warrant and supporting papers were duly authenticated.

ARGUMENT

Petitioner makes much over the fact that the Governor's Warrant and supporting papers were "merely" stapled together. She devotes a goodly portion of her argument to what might have happened to these papers between the time they left the Maryland Governor's desk and the time they were offered in evidence in the Circuit Court of Jefferson County, Alabama. Petitioner is, however, unable to show a single deletion or addition to the papers. A separation of the papers was shown, but it was also shown that the papers were separated merely to make xerox copies of them, and that they were restapled in the same order as they were in before the staples were removed.

The State of Alabama would respectfully contend that staples do, in fact, provide a reasonably secure means of insuring that no deletions or additions are made with regard to a group of papers. Each time a staple is inserted, it leaves a hole in the paper, and, thus, the papers would show in and of themselves that they had been tampered with. The only way to avoid this would be to replace a staple in the exact same position, utilizing the exact same holes as were made by the previous staple.

Petitioner argues that the papers should be fastened together in such a manner as to insure that they remain intact. The State would respectfully contend that if this rule were applied literally, then no such group of papers would ever be admissible as evidence in a court of law, for it would be impossible to guard against tampering in such a way as to "assure" the authenticity of all the papers beyond any doubt at all.

The State of Alabama respectfully contends that the issue is not one of absolute assurance, but of reasonableness. If the court in Alabama is reasonably satisfied that the papers are in the same condition as they were in when they left the Maryland Governor's Office, then the logical rule would be that they should be admitted into evidence. The mere possibility that the papers have been tampered with should not be enough, in and of itself, to preclude their admissibility. If documents are to be ruled inadmissible because of mere speculation as to their authenticity, then it can truthfully be said that no document would qualify.

Petitioner relies on the cases of *Aldio v. State*, 42 Ala. App. 653, 177 So.2d 107, *Griffin v. State*, 43 Ala. App. 237, 187 So.2d 293, and *Meadows v. State*, 38 Ala. App. 319, 82

So.2d 811, to support her contention that the documents in question should not be admitted into evidence. An analysis of these cases, however, reveals that they do not support Petitioner's contentions.

In both *Aldio* and *Meadows*, there was no request for requisition made by the Governor of the demanding state, nor were the supporting documents authenticated as required by Title 15, Section 50, Code of Alabama 1940, Recompiled 1958. The question in *Griffin* was whether the papers accompanying a requisition warrant were properly authenticated. The Alabama Court of Criminal Appeals held that these papers were sufficiently authenticated when the Governor of the demanding state has authenticated them.

The Maryland Governor's demand for extradition was in proper form. Title 15, Section 50, Code of Alabama 1940, Recompiled 1958, states that no demand shall be recognized by the Alabama Governor unless it is in writing, includes a copy of the indictment which charges the person with committing a crime, and is authenticated by the demanding authority.

Title 15, Section 52, Code of Alabama 1940, Recompiled 1958, states that a requisition warrant will not be issued unless the documents presented by the demanding authority show that the accused was present in the demanding state at the time the crime was committed, that he thereafter fled the state and is now in Alabama, and that he is charged by indictment with the commission of the crime.

The State respectfully submits that the requirements of Sections 50 and 52 have been satisfied. The supporting papers which were attached to the Maryland Governor's demand were not necessary for the Alabama court to find that

extradition was proper. All that is required under the Alabama statutes is that the indictment be included. In the instant case, the indictment was properly authenticated and the Maryland Governor referred specifically to it in his request.

It should be noted that the Federal law on the subject is much the same as the Alabama law. Title 18, Section 3182, United States Code Annotated, makes much the same requirements as the Alabama laws, and, under the facts, it is clear that these requirements were also met.

The Respondent respectfully submits that the opinion of the lower court was correct. The admission of the supporting papers in no way violated Petitioner's right to a fair trial.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this Petition For a Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Richard F. Calhoun, one of the Attorneys For Respondent, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 29 day of Dec, 1972, I served copies of the foregoing Brief on Honorable Arthur Parker, Attorney for Petitioner, by placing said copy in the mail, postage prepaid, and properly addressed to said attorney of record, as follows:

210 Frank Nelson Building
Birmingham, Alabama 35203

Richard F. Hall

RICHARD F. CALHOUN
Assistant Attorney General
of Alabama

APPENDIX

TITLE 15, SECTION 50, CODE OF ALABAMA 1940 RECOMPILED 1958

§ 50. **Form of demand.**—No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing and accompanied by a copy of an indictment found or by an information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereon. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy must be authenticated by the executive authority making the demand, which shall be prima facie evidence of its truth. (1931, p. 559.)

TITLE 15, SECTION 52, CODE OF ALABAMA 1940 RECOMPILED 1958

§ 52. **What papers must show.**—A warrant of extradition must not be issued unless the documents presented by the executive authority making the demand show that the accused was present in the demanding state at the time of the commission of the alleged crime, and that he thereafter fled from that state, and is now in this state, and that he is lawfully charged by indictment or by an information filed by a prosecuting officer and supported by affidavit to the

facts, or by affidavit made before a magistrate in that state, with having committed a crime under the laws of that state, or that he has been convicted of crime in that state and has escaped from confinement or broken his parole. (1931, p. 559.)

TITLE 18, SECTION 3182 UNITED STATES CODE ANNOTATED.

§ 3182. Fugitives from State or Territory to State, District or Territory

Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged.

June 25, 1948, c. 645, 62 Stat. 822.